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In re Application of
DAVID BAILEY ET AL. :
Appl. No.: 10/018,061 : DECISION UNDER
PCT No.: PCT/AU00/00669 : 37 CFR 1.181
Int. Filing Date: 16 June 2000 :
Priority Date: 18 June 1999 :
Agent's File Reference: APV 31535 :
For: CATHODE PLATE

Applicants' 09 April 2003 "Renewed Petition Under 37 CFR 1.181" requesting relief based on non-receipt of the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905 mailed 07 February 2002) has been received. No petition fee is required. The petition is **GRANTED**.

BACKGROUND

On 31 March 2003, applicants' 30 July 2002 petition requesting that the mail date of the Form PCT/DO/EO/905 be reset due to non-receipt of the Form PCT/DO/EO/905 mailed 07 February 2002 was dismissed because the petition did not: (1) attest that a search of the file jacket indicates that the Office action was not received, (2) attest that a search of counsel's docket records indicates the Office action was not received and (3) was not accompanied by copies of the docket records where the non-received Office action would have been entered.

On 09 April 2003, applicants filed the present renewed petition requesting relief based on non-receipt of the Form PCT/DO/EO/905 mailed 07 February 2002.

DISCUSSION

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates that the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered (See also, Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971)). MPEP 711.03(c) provides in part that:

"A copy of the docket record where the nonreceived communication would have been entered had it been received and docketed must be attached to and reference in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action".

A review of the papers filed on 09 April 2003 reveals that applicants have satisfied items (1)- (4) above to establish non-receipt of the Form PCT/DO/EO/905 mailed 07 February 2002. Accordingly, applicants' petition to reset the mailing date of the Form PCT/DO/EO/905 is appropriate.

CONCLUSION

Applicants' petition to reset the period for response for the Form PCT/DO/EO/905 mailed 07 February 2002 is hereby **GRANTED** in part as follows: The Form PCT/DO/EO/905 faxed to applicants on May 29, 2002 indicated that a response was due on July 29, 2002. Applicant filed the declaration on July 30, 2002 (i.e., one day late). Accordingly, a \$110 one-month extension of time will be charged to Deposit Account No. 19-4375. The present application is being returned to the DO/EO/US for the mailing of a "NOTICE OF ACCEPTANCE UNDER 35 U.S.C. 371" (Form PCT/DO/EO/903), to charge the \$130 surcharge for the late filing of the declaration and to refund the \$920 extension of time fee.



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